

House Bill 528 (AS PASSED HOUSE AND SENATE)

By: Representatives Martin of the 47th, Burkhalter of the 50th, Stephens of the 164th, Lane of the 158th, and Roberts of the 154th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians, physician's assistants, and others, so as to provide for the licensing of cosmetic laser practitioners; to provide a short title; to provide legislative findings; to provide for definitions; to provide for construction; to provide for applications to be made to the Composite State Board of Medical Examiners to obtain a license for different levels of cosmetic laser practitioner; to provide for powers and duties of the board; to provide for licensing standards and requirements; to provide for the issuance and renewal of licenses; to provide for permitted and prohibited activities; to provide continuing education requirements; to require that each facility offering cosmetic laser services have a consulting physician; to require that written consent be given for cosmetic laser services; to provide for rules and regulations; to provide for an advisory board; to provide for sanctions; to provide for related matters; to provide for a contingent effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians, physician's assistants, and others, is amended by adding a new article to read as follows:

"ARTICLE 9

43-34-240.

This article shall be known and may be cited as the 'Georgia Cosmetic Laser Services Act.'

43-34-241.

This article is enacted for the purpose of safeguarding the public health, safety, and welfare by providing for state administrative control, supervision, and regulation of the practice of

1 providing cosmetic laser services. It is the intention of the General Assembly that cosmetic
2 laser services be made available and affordable to the people of this state in a safe, reliable
3 manner. Unregulated cosmetic laser services do not adequately meet the needs or serve the
4 interests of the public. Licensure of those performing cosmetic laser services and required
5 education and training of such practitioners will help ensure the health and safety of
6 consumers. The practice of providing cosmetic laser services is declared to be affected
7 with the public interest; and this article shall be liberally construed so as to accomplish the
8 purpose stated in this Code section.

9 43-34-242.

10 As used in this article, the term:

11 (1) 'Board' means the Composite State Board of Medical Examiners created by Code
12 Section 43-34-21.

13 (2) 'Consulting physician' means a person licensed to practice medicine under this chapter
14 and:

15 (A) Whose principal place of practice is within this state; or

16 (B) Whose principal place of practice is outside this state but is within 50 miles from
17 the facility with whom he or she has an agreement to provide services in accordance
18 with Code Section 43-34-248.

19 (3) 'Consumer' means a person on whom cosmetic laser services are or are to be
20 performed.

21 (4) 'Cosmetic laser practitioner' means a person licensed under this article to provide
22 cosmetic laser services as defined in this article and whose license is in good standing.

23 (5) 'Cosmetic laser services' means nonablative elective cosmetic light based skin, photo
24 rejuvenation, or hair removal using lasers and pulsed light devices approved by the
25 United States Food and Drug Administration for noninvasive procedures. Such services
26 and the provision thereof shall not be considered to be the practice of medicine.

27 (6) 'Facility' means any location, place, area, structure, office, institution, or business or
28 a part thereof in which is performed or provided cosmetic laser services regardless of
29 whether a fee is charged for such services.

30 (7) 'License' means a valid and current certificate of registration issued by the board
31 which shall give the person to whom it is issued authority to engage in the practice
32 prescribed thereon.

33 (8) 'Licensee' means any person holding a license under this article.

34 (9) 'Medical practitioner' means a registered professional nurse, licensed practical nurse,
35 nurse practitioner, physician's assistant, or physician.

(10) 'Nurse' means a registered professional nurse, licensed practical nurse, or nurse practitioner.

(11) 'Person' means a natural person.

43-34-243.

This article shall not be construed to prohibit:

(1) A licensed physician from engaging in the practice for which he or she is licensed;

(2) A licensed physician's assistant from engaging in the practice for which he or she is licensed;

(3) A person licensed by this state as a registered professional nurse, licensed practical nurse, or nurse practitioner from engaging in his or her profession;

(4) A licensed esthetician from engaging in his or her profession;

(5) A master cosmetologist from engaging in his or her profession;

(6) Any person licensed under any other article of this chapter from engaging in the practice for which he or she is licensed;

(7) A person licensed in this state under any other law from engaging in the practice for which he or she is licensed;

(8) The practice of providing cosmetic laser services by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;

(9) The practice of providing cosmetic laser services by a student enrolled in an accredited school of nursing or medical school as part of his or her training; or

(10) Employees or authorized representatives of a manufacturer of a laser used for cosmetic laser services from engaging in one or more of the following: evaluating, adjusting, measuring, designing, fabricating, assembling, fitting, servicing, training, repairing, replacing, or delivering a laser used to provide cosmetic laser services under the order, direction, or prescription of a physician or health provider operating within his or her licensed scope of practice.

43-34-244.

(a) There shall be two levels of a license for a cosmetic laser practitioner: assistant laser practitioner and senior laser practitioner.

(b) Any person desiring to obtain a license as a cosmetic laser practitioner under the terms of this article shall make application to the board as follows:

(1) An applicant for an 'assistant laser practitioner' license shall present proof that he or she:

1 (A) Holds a current valid license or certificate of registration as a physician's assistant,
2 nurse, esthetician, or master cosmetologist, or has previously held a license or
3 certificate of registration as a medical practitioner; and

4 (B) Has received at least three laser certificates from attending laser/intense pulsed
5 light (IPL) courses as approved by the board, directly taught by a licensed physician or
6 certified continuing medical education or continuing education educator.

7 If, after review of the application, it is determined that the applicant is at least 21 years
8 of age; has met the minimum educational requirements; is of good moral character; and
9 is possessed of the requisite skill to perform properly cosmetic laser services, a license
10 shall be issued to the applicant entitling the applicant to practice the occupation of
11 cosmetic laser practitioner at the assistant laser practitioner level under the direct
12 supervision of a senior laser practitioner.

13 (2) An applicant for a 'senior laser practitioner' license shall present proof that he or she:

14 (A) Holds a current valid license or certificate of registration as a physician's assistant
15 or nurse or has previously held a license or certificate of registration as a medical
16 practitioner;

17 (B) Has at least three years of clinical or technological medical experience, or both;

18 (C) Has been or was licensed or nationally board certified as a medical practitioner for
19 at least three years; and

20 (D) Has received at least two laser certificates from attending laser/intense pulsed light
21 (IPL) continuing medical education courses as approved by the board, directly taught
22 by a licensed physician or certified continuing medical education or continuing
23 education educator.

24 If, after review of the application, it is determined that the applicant is at least 21 years
25 of age; has met the minimum educational and clinical training requirements to perform
26 cosmetic laser services with indirect supervision; is of good moral character; and is
27 possessed of the requisite skill to perform properly these services, a license shall be
28 issued to the applicant entitling the applicant to practice the occupation of cosmetic laser
29 practitioner at the senior laser practitioner level pursuant to the protocols of a consulting
30 physician.

31 (c) The board shall be authorized to waive any education requirements under this Code
32 section in cases of hardship, disability, or illness or under such other circumstances as the
33 board deems appropriate with respect to any applicant who has practiced as a cosmetic
34 laser practitioner prior to July 1, 2007.

35 (d) Should an applicant have a current cosmetic laser practitioner license or certificate of
36 registration in force from another state, country, territory of the United States, or the
37 District of Columbia, where similar reciprocity is extended to this state and licensure

requirements are substantially equal to those in this state, and have paid a fee and have submitted an application, the applicant may be issued a license at the appropriate level entitling him or her to practice the occupation of a cosmetic laser practitioner at that level, unless the board, in its discretion, sees fit to require a written or a practical examination subject to the terms and provisions of this article. The board shall be authorized to waive any education or experience requirements applicable to any person who holds a current license or certificate to practice as a cosmetic laser practitioner outside of this state and who desires to obtain a license at a level authorized under this Code section to practice as a cosmetic laser practitioner in this state in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

43-34-245.

(a) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the board prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board. A license which has expired for failure of the holder to renew may only be restored after application and payment of the prescribed restoration fee within the time period established by the board and provided the applicant meets such requirements as the board may establish by rule. Any license which has not been restored within such period following its expiration may not be renewed, restored, or reissued thereafter. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for issuance of a new license.

(b) As a condition of license renewal, the board shall require licensees to provide proof, in a form approved by the board, of a minimum of five hours of continuing education courses as approved by the board in the area of cosmetic laser services, equipment safety and operation, procedures, and relative skin modalities, directly taught by a licensed physician or certified continuing medical education or continuing education educator.

43-34-246.

(a) The board shall have authority to refuse to grant or restore a license to an applicant or to discipline a cosmetic laser practitioner under this article upon a finding by the board that the licensee or applicant has:

(1) Displayed an inability or has become unable to practice as a cosmetic laser practitioner with reasonable skill and safety to consumers by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by an appropriate

1 practitioner of the healing arts designated by the board. The expense of such mental or
2 physical examination shall be borne by the licensee or applicant. The results of such
3 examination shall be admissible in any hearing before the board, notwithstanding any
4 claim of privilege under a contrary rule of law or statute, including, but not limited to,
5 Code Section 24-9-21. Every person who shall accept the privilege of practicing
6 cosmetic laser services in this state or who shall file an application for a license to
7 provide cosmetic laser services in this state shall be deemed to have given his or her
8 consent to submit to such mental or physical examination and to have waived all
9 objections to the admissibility of the results in any hearing before the board upon the
10 grounds that the same constitutes a privileged communication. If a licensee or
11 applicant fails to submit to such an examination when properly directed to do so by the
12 board, unless such failure was due to circumstances beyond his or her control, the board
13 may enter a final order upon proper notice, hearing, and proof of such refusal. Any
14 licensee or applicant who is prohibited from practicing cosmetic laser services under
15 this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate
16 to the board that he or she can resume or begin the practice of cosmetic laser
17 practitioner with reasonable skill and safety to consumers;

18 (B) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain
19 any and all records relating to the mental or physical condition of a licensee or
20 applicant, including psychiatric records; and such records shall be admissible in any
21 hearing before the board, notwithstanding any privilege under a contrary rule of law or
22 statute, including, but not limited to, Code Section 24-9-21. Every person who shall
23 accept the privilege of practicing as a cosmetic laser practitioner in this state or who
24 shall file an application to practice cosmetic laser services in this state shall be deemed
25 to have given his or her consent to the board's obtaining any such records and to have
26 waived all objections to the admissibility of such records in any hearing before the
27 board upon the grounds that the same constitute a privileged communication; and

28 (C) If any licensee or applicant could, in the absence of this paragraph, invoke a
29 privilege to prevent the disclosure of the results of the examination provided for in
30 subparagraph (A) of this paragraph or the records relating to the mental or physical
31 condition of such licensee or applicant obtained pursuant to subparagraph (B) of this
32 paragraph, all such information shall be received by the board in camera and shall not
33 be disclosed to the public, nor shall any part of the record containing such information
34 be used against any licensee or applicant in any other type of proceeding;

35 (2) Been convicted of a felony or crime involving moral turpitude in the courts of this
36 state, the United States, or the conviction of an offense in another jurisdiction which if
37 committed in this state would be deemed a felony. For the purpose of this Code section,

1 a 'conviction' shall include a finding or verdict of guilty, a plea of guilty, or a plea of nolo
2 contendere in a criminal proceeding regardless of whether the adjudication of guilt or
3 sentence is withheld or not entered thereon pursuant to the provisions of Code Sections
4 42-8-60 through 42-8-64, relating to first offenders, or any comparable rule or statute;

5 (3) Knowingly made misleading, deceptive, untrue, or fraudulent representations to a
6 consumer or other person or entity in connection with the practice of providing cosmetic
7 laser services or in any document connected therewith; practiced fraud or deceit or
8 intentionally made any false statement in obtaining or attempting to obtain a license to
9 practice cosmetic laser services or as a cosmetic laser practitioner; or made a false or
10 deceptive biennial registration with the board;

11 (4) Has had a license or certificate of registration as a medical practitioner revoked,
12 suspended, or denied;

13 (5) Practiced cosmetic laser services contrary to this article or to the rules and regulations
14 of the board; knowingly aided, assisted, procured, or advised any person to provide
15 cosmetic laser services contrary to this article or to the rules and regulations of the board;
16 or knowingly performed any act which in any way aids, assists, procures, advises, or
17 encourages any unlicensed person to provide cosmetic laser services;

18 (6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or
19 practice harmful to the public, which conduct or practice need not have resulted in actual
20 injury to any person, as determined as a result of an investigation initiated upon the
21 board's own motion or as a result of a sworn written request for investigation, by or on
22 behalf of a consumer, of an act or acts which occurred within three years of such
23 initiation or request; or

24 (7) Failed to report to the board any act or omission of a licensee or applicant or any
25 other person which violates the provisions of this article.

26 (b)(1) When the board finds that any person is unqualified to be granted a license or
27 finds that any person should be disciplined pursuant to subsection (a) of this Code
28 section, the board may take any one or more of the following actions:

29 (A) Refuse to grant or restore a license to an applicant;

30 (B) Administer a public or private reprimand, but a private reprimand shall not be
31 disclosed to any person except the licensee;

32 (C) Suspend any license for a definite period;

33 (D) Limit or restrict any license;

34 (E) Revoke any license;

35 (F) Condition the penalty or withhold formal disposition, upon the cosmetic laser
36 practitioner's submission to the care, counseling, or treatment of physicians or other

professional persons, and the completion of such care, counseling, or treatment, as directed by the board; or

(G) Impose a fine not to exceed \$500.00 for each violation of law, rule, or regulation of the board.

(2) In addition to or in conjunction with the actions enumerated pursuant to paragraph (1) of this subsection the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty, or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee or applicant on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(c) In its discretion, the board may restore and reissue a license issued under this article and, as a condition thereof, it may impose any disciplinary or corrective measure provided in this article.

(d) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a cosmetic laser practitioner, if such report is made in good faith without fraud or malice. Any person who testifies without fraud or malice before the board in any proceeding involving a violation of the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a cosmetic laser practitioner shall be immune from civil and criminal liability for so testifying.

43-34-247.

The practice of providing cosmetic laser services is declared to be an activity affecting the public interest and involving the health, safety, and welfare of the public. Such practice when engaged in by a person who is not licensed as a cosmetic laser practitioner or otherwise licensed to practice a profession which is permitted under law to perform cosmetic laser services is declared to be harmful to the public health, safety, and welfare. The board or the district attorney of the circuit where such unlicensed practice exists, or any person or organization having an interest therein, may bring a petition to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides. It shall not be necessary in order to obtain an injunction under this Code section to allege or prove that there is no adequate remedy at law, or to allege or prove any special injury.

1 43-34-248.

2 Any facility providing cosmetic laser services shall have an agreement with a consulting
3 physician who shall:

4 (1) Be trained in laser modalities;

5 (2) Establish proper protocols for the cosmetic laser services provided at the facility and
6 file such protocols with the board; and

7 (3) Be available for emergency consultation with the cosmetic laser practitioner or
8 anyone employed by the facility.

9 43-34-249.

10 (a) Prior to receiving cosmetic laser services from a cosmetic laser practitioner, a person
11 must consent in writing to such services and shall be informed in writing of the general
12 terms of the following:

13 (1) The nature and purpose of such proposed procedure;

14 (2) Any material risks generally recognized and associated with the cosmetic laser
15 service to be performed which, if disclosed to a reasonably prudent person in the
16 customer's position, could reasonably be expected to cause such prudent person to
17 decline such proposed cosmetic laser services on the basis of the material risk of injury
18 that could result from such proposed services;

19 (3) The type of license the individual who will performing the cosmetic laser service has
20 obtained; and

21 (4) The steps to be followed after the cosmetic laser service is performed in the event of
22 any complications.

23 (b) It shall be the responsibility of the cosmetic laser practitioner to ensure that the
24 information required by subsection (a) of this Code section is disclosed and that the consent
25 provided for in this Code section is obtained.

26 (c) Where the consumer is under 18 years of age, the consent of the consumer's parent or
27 legal guardian shall be required.

28 (d) The board shall be required to adopt and have the authority to promulgate rules and
29 regulations governing and establishing the standards necessary to implement this Code
30 section specifically including but not limited to the disciplining of a cosmetic laser
31 practitioner who fails to comply with this Code section.

32 (e) Nothing in this Code section shall prohibit the information provided for in this Code
33 section from being disclosed through the use of video tapes, audio tapes, pamphlets,
34 booklets, or other means of communication or through conversations with the cosmetic
35 laser practitioner; provided, however, that such information is also provided in writing and
36 attached to the consent form which the consumer signs.

1 43-34-250.

2 The board shall appoint an advisory committee. The advisory committee shall be
3 representative of a cross section of the cultural backgrounds, to the extent practical, of the
4 licensed cosmetic laser practitioners licensed under this article and such members as the
5 board in its discretion may determine. Members shall receive no compensation for service
6 on the committee. The committee shall have such advisory duties and responsibilities as
7 the board may determine, including but not limited to consulting with the board on the
8 issuance, denial, suspension, and revocation of licenses and the promulgation of rules and
9 regulations under this article. The initial members of the advisory committee may include
10 persons eligible for licensing under this article. Subsequent advisory committee members
11 must be licensed pursuant to this article.

12 43-34-251.

13 (a) It shall be unlawful for any person licensed as a cosmetic laser practitioner to perform
14 cosmetic laser services within any area within one inch of the nearest part of the eye socket
15 of any consumer.

16 (b) It shall be unlawful for any person licensed as a cosmetic laser practitioner to
17 administer any pharmaceutical agent or other substance by injection.

18 43-34-252.

19 Any person who owns a facility in which cosmetic laser services are offered or performed
20 in noncompliance with the requirements of this article shall be guilty of a misdemeanor.

21 43-34-253.

22 Any person convicted of violating any provision of this article shall be guilty of a
23 misdemeanor."

24 **SECTION 2.**

25 This Act shall become effective only if funds are specifically appropriated for the purposes
26 of this Act in a General Appropriations Act making specific reference to this Act and shall
27 become effective when funds so appropriated become available for expenditure.

28 **SECTION 3.**

29 All laws and parts of laws in conflict with this Act are repealed.